

Minnesota Sentencing Guidelines Commission
Approved Meeting Minutes
May 11, 2017

A meeting of the Minnesota Sentencing Guidelines Commission (MSGC) was held on May 11, 2017, in Room 116C of the Administration Building, 50 Sherburne Ave., St. Paul, MN 55155. Present were Commission Chair Justice (Ret.) Christopher Dietzen, Commission Vice-Chair Judge Heidi Schellhas, and Commission members Valerie Estrada, Sergeant Paul Ford, Judge Caroline Lennon, Cathryn Middlebrook, Peter Orput, Commissioner of Corrections Tom Roy, Yamy Vang, and Senior Judge Mark Wernick.

Also present were MSGC Executive Director Nate Reitz and MSGC staff members Brian E. Oliver, Jill Payne and Anne Wall.

Members of the public present included Prof. Francis X. Shen, University of Minnesota Law School; Ben Johnson, House Research; Lisa Netzer, Minn. Department of Corrections; Lars Negstad, ISAIAH MN; Josh Esmay, Legal Rights Center; and Robert Small, Executive Director of the Minn. County Attorneys Association.

1. Call to Order

Chair Dietzen called the meeting to order at 2:00 p.m.

2. Approval of Agenda

This was on the agenda as an action item.

Chair Dietzen said that there was a letter in the meeting materials from Julie Matonich, Board President of Children of Incarcerated Caregivers (CIC), requesting that the CIC proposal, listed as item 5 of the Commission's agenda, be removed from the agenda because the CIC board members wanted the opportunity to obtain feedback from attorneys and judges at upcoming presentations before the Commission considered the proposed amendment.

Motion by Judge Wernick and second by Ms. Middlebrook to remove item 5 from the agenda indefinitely at the request of CIC.

Ms. Middlebrook explained that, following CIC's presentation to the Commission, its board members presented to the chief district public defenders and obtained feedback, information, and suggestions. Ms. Middlebrook said that CIC plans to make presentations to other stakeholders before seeking the Commission's action on an amendment to Commentary.

Motion carried unanimously.

Motion by Judge Lennon and second by Sgt. Ford to approve the meeting agenda, as amended.

Motion carried unanimously.

3. Approval of Meeting Minutes

This was on the agenda as an action item.

Motion by Ms. Vang and second by Mr. Orput to approve the meeting minutes from April 13, 2017.

Motion carried unanimously.

4. Life Sentences for Juveniles in Minnesota

This was on the agenda as a presentation and discussion item.

Chair Dietzen called on Commission member Peter Orput to introduce Professor Francis X. Shen. Mr. Orput said that Dr. Shen is an Associate Professor of Law at the University of Minnesota and was Executive Director of Education and Outreach for the MacArthur Foundation Law and Neuroscience Project. Mr. Orput said that Dr. Shen was the coauthor of a leading coursebook on Law and Neuroscience.

Chair Dietzen welcomed Dr. Shen.

Dr. Shen gave a presentation on the use of neuroscience in individualized sentencings of heinous juvenile crimes in Minnesota. Dr. Shen began by discussing the legal context, including the U.S. Supreme Court's use of the terms "irreparable corruption," "irretrievabl[e] deprav[ity]," and "permanent incorrigibility," in discussing those juveniles for whom life without parole may be fitting. Dr. Shen then discussed the neuroscientific context and the broad scientific agreement about the general development of the adolescent brain. Dr. Shen cautioned about the difficulty of transferring such general knowledge to conclusions about the brain of a particular adolescent in a particular criminal case, concluding that the juvenile's individual brain data will not be available to a sentencing court; that there is scholarly disagreement as to whether group-averaged brain data can meaningfully apply to an individual case; and that it would be reasonable for a sentencing court not to consider neuroscience, but also reasonable to consider it in some contexts if appropriate cautions were met.

The Commission asked questions of the presenter and discussed the item.

5. Racial Impact Statements

This was on the agenda as a discussion item.

Chair Dietzen presented a draft revision of the Racial Impact Statement policy. The Chair opined that, while the Commission lacks statutory authority to prepare racial impact statements under Minn. Stat. § 244.09, subdivision 6, it does have the authority to respond to specific legislative requests under statutes pertaining to fiscal notes, Minn. Stat. §§ 3.98 & 13.64, subd. 3.

Judge Wernick presented an exhibit of Minn. Stat. § 244.09, subdivision 6, and an excerpt from the MSGC Report to the Legislature, January 1, 1980, page 21. Judge Wernick also presented his calculations of racial disparity in Minnesota's prison population. Judge Wernick opined that the Commission did have the authority to prepare racial impact statements.

A lengthy discussion ensued, during which a member suggested that the Commission may wish to expand its racial impact statements to include other demographic information such as age and gender.

Chair Dietzen said that he would like to look at the policy again before the next legislative session and build consensus.

6. Staff Update: Robina Institute Recidivism Study Update

This was on the agenda as a presentation and discussion item.

Chair Dietzen called on Executive Director Reitz, who said that he had spoken with the Robina Institute's Executive Director, Kelly Lyn Mitchell. She had told him that the recidivism study has been delayed because of personnel changes. The study is anticipated to be finished by November, 2017, in time for its scheduled presentation. Director Reitz said that staff would update the Commission again, most likely at the Commission's November, 2017, meeting.

7. Criminal History Score – Custody Status Point

This was on the agenda as a presentation and discussion item.

Chair Dietzen called on Director Reitz, who suggested that this item be moved to the June 8, 2017, meeting agenda to allow for sufficient presentation and discussion time.

Motion by Commissioner Roy and second by Judge Wernick to table the presentation until the June 8, 2017 meeting.

Motion carried unanimously.

8. Technical Correction to Guidelines Commentary – Revoked Stay of Adjudication, Comment 2.D.106

This was on the agenda as a possible action item.

Chair Dietzen called on Director Reitz who explained that staff recommended striking an obsolete cross-reference within Comment 2.D.106 to Comment 2.C.10.

Motion by Commissioner Roy and second by Mr. Orput to table the item until the June 8, 2017, meeting agenda when it can be moved to public hearing.

Motion carried unanimously.

9. Staff Legislative Update

Chair Dietzen called on Director Reitz who gave a legislative update. Director Reitz said that the Senate File 803 Conference Committee report (public safety omnibus bill) was finalized and that policy provisions mentioning the Commission and the Guidelines were removed from the current version of the bill.

10. Director's Report

Director Reitz reported on three items: 1) the legislative progress of the agency's budget; 2) that the meeting date marked the 159th anniversary of Minnesota's statehood; and 3) that the next meeting of the Commission, to be held on June 8, 2017, in Room 1100 of the Minn. Senate Building, would require a quorum because the Commission would need to act on any new and amended crime legislation passed during the 2017 Session.

11. Public Input

Chair Dietzen called on members of the public present and asked if anyone wished to speak.

Josh Esmay from the Legal Rights Center wished to address the Commission about its racial impact statements. Mr. Esmay said that the Commission's data, from an outsider's perspective, was viewed as impartial. Mr. Esmay said that he hoped that the Commission could reach a compromise on the topic of racial impact statements.

12. Adjournment

Motion by Ms. Vang and second by Judge Lennon to adjourn.

Motion carried unanimously.

The meeting was adjourned at 4:00 p.m.